
0000121295

MUNGER CHADWICK, P.L.C.

ATTORNEYS AT LAW
A PROFESSIONAL LIMITED LIABILITY COMPANY
NATIONAL BANK PLAZA
333 NORTH WILMOT, SUITE 300
TUCSON, ARIZONA 85711
(520) 721-1900
FAX (520) 747-1550

JOHN F. MUNGER
MARK E. CHADWICK
MICHAEL S. GREEN

OF COUNSEL
LAWRENCE V. ROBERTSON, JR.
ADMITTED TO PRACTICE IN:
ARIZONA, COLORADO, MONTANA,
NEVADA, TEXAS, WYOMING,
DISTRICT OF COLUMBIA

OF COUNSEL
MILLER, LA SOTA AND PETERS, P.L.C.
PHOENIX, ARIZONA

OF COUNSEL
OGARRIO Y DIAZ ABOGADOS
MEXICO, D.F., MEXICO
(LICENSED SOLELY IN MEXICO)

MICHAEL M. RACY
GOVERNMENT RELATIONS DIRECTOR
(NON-LAWYER)
DIRECT LINE: (520) 850-4646

PHOENIX APPOINTMENT ADDRESS:
5225 N. CENTRAL
SUITE 235
PHOENIX, ARIZONA 85012
(602) 230-1850

September 17, 1998

Docket Control Center
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Attention: Carmen Madrid

Re: Docket No. RE-00000C-94-0165

Dear Ms. Madrid:

Pursuant to the August 11, 1998 Procedural Order entered in the above-referenced proceeding, PG&E Energy Services Corporation ("Energy Services") hereby submits an original and ten (10) copies of its comments on the proposed rules which are the subject of the Commission's Decision No. 61071, which was issued on August 10, 1998.

Energy Services incorporates herein by reference the substantive discussion of its July 2, 1998 and July 14, 1998 letters to the Acting Director of the Utilities Division which related to earlier versions of the Staff's proposed amendments to the Retail Electric Competition Rules then in effect. To the extent the amendments promulgated by Decision No. 61071 have not adequately addressed and disposed of the concerns discussed by Energy Services, those concerns remain and warrant further consideration by the Commission. Copies of the aforesaid letters are attached hereto as Appendices "A" and "B".

Respectfully submitted,

Michael S. Green /for

Lawrence V. Robertson, Jr.
Attorney for PG&E Energy
Services Corporation

work\larry\pg&e\docket.917

Copies of the foregoing mailed
this 17th day of September, 1998, to:

Barbara Klemstine
ARIZONA PUBLIC SERVICE CO.
Law Department, Station 9909
P.O. Box 53999
Phoenix, Arizona 85072-3999

Greg Patterson
RUCO
2828 N Central Ave, Suite 1200
Phoenix, Arizona 85004

Michael A. Curtis
MARTINEZ & CURTIS, P.C.
2712 North 7th Street
Phoenix, Arizona 85006
Attorneys for Arizona Municipal Power Users' Association

Walter W. Meek, President
ARIZONA UTILITY INVESTORS ASSOCIATION
2100 N. Central Avenue, Suite 210
Phoenix, Arizona 85004

Rick Gilliam
LAND AND WATER FUND O F THE ROCKIES
2260 Baseline Road, Suite 200
Boulder, Colorado 80302

Charles R. Huggins
ARIZONA STATE AFL-CIO
5818 N. 7th Street, Ste 200
Phoenix, Arizona 85014-8511

David C. Kennedy
LAW OFFICES OF DAVID C. KENNEDY
100 West Clarendon Avenue, Suite 200
Phoenix, Arizona 85012-3525

Norman J. Furuta
DEPARTMENT OF THE NAVY
900 Commodore Drive, Building 107
San Bruno, California 94066-0720

Thomas C. Horne
Michael S. Dulberg
HORNE, KAPLAN & BISTROW, P.C.
40 North Central Avenue, Suite 2800
Phoenix, Arizona 85004

Barbara S. Bush
COALITION FOR RESPONSIBLE ENERGY EDUCATION
315 West Riviera Drive
Tempe, Arizona 85252

Rick Lavis
ARIZONA COTTON GROWERS ASSOCIATION
4139 East Broadway Road
Phoenix, Arizona 85040

Steve Brittle
DON'T WASTE ARIZONA, INC.
6205 South 12th Street
Phoenix, Arizona 85040

Karen Glennon
19037 N. 44th Avenue
Glendale, Arizona 85308

COLUMBUS ELECTRIC COOPERATIVE, INC.
P.O. Box 631
Deming, New Mexico 88031

CONTINENTAL DIVIDE ELECTRIC COOPERATIVE
P.O. Box 1087
Grants, New Mexico 87020

DIXIE ESCALANTE RURAL ELECTRIC ASSOCIATION
CR Box 95
Beryl, Utah 84714

GARKANE POWER ASSOCIATION, INC.
P.O. Box 790
Richfield, Utah 84701

Betty Pruitt
ARIZONA COMMUNITY ACTION ASSOC.
2627 North 3rd Street, Ste #2
Phoenix, Arizona 85004

Bradley Carroll
TUCSON ELECTRIC POWER CO.
P.O. Box 711
Tucson, Arizona 85702

Mick McElrath
CYPRUS CLIMAX METALS CO.
P.O. Box 22015
Tempe, Arizona 85285-2015

A.B. Baardson
NORDIC POWER
4281 N. Summerset
Tucson, Arizona 85715

Michael Rowley
c/o CALPINE POWER SERVICES
50 West San Fernando, Suite 550
San Jose, California 95113

Dan Neidlinger
3020 N. 17th Drive
Phoenix, Arizona 85015

Jessica Youle
PAB300
SALT RIVER PROJECT
P.O. Box 52025
Phoenix, Arizona 85072-2025

Clifford Cauthen
GRAHAM COUNTY ELECTRIC CO-OP
P.O. Drawer B
Pima, Arizona 85543

Joe Eichelberger
MAGMA COPPER COMPANY
P.O. Box 37
Superior, Arizona 85273

Craig Marks
CITIZENS UTILITIES COMPANY
2901 N. Central Avenue, Suite 1660
Phoenix, Arizona 85012

Jack Shilling
DUNCAN VALLEY ELECTRIC COOPERATIVE
P.O. Box 440
Duncan, Arizona 85534

Nancy Russell
ARIZONA ASSOCIATION OF INDUSTRIES
1111 North 3rd Street
Phoenix, Arizona 85004

Barry Huddleston
DESTEC ENERGY
P.O. Box 4411
Houston, Texas 77210-4411

Steve Montgomery
JOHNSON CONTROLS
2032 West 4th Street
Tempe, Arizona 85281

Ken Saline
K.R. SALINE & ASSOCIATES
160 N. Pasadena
Suite 101
Mesa, AZ 85201

Louis A. Stahl
STREICH LANG
2 North Central Avenue
Phoenix, Arizona 85004

Sheryl Johnson
TEXAS-NEW MEXICO POWER CO.
4100 International Plaza
Fort Worth, Texas 76109

Ellen Corkhill
AARP
5606 North 17th Street
Phoenix, Arizona 85016

Andrew Gregorich
BHP COPPER
P.O. Box M
San Manuel, Arizona

Larry McGraw
USDA-RUS
6266 Weeping Willow
Rio Rancho, New Mexico 87124

Jim Driscoll
ARIZONA CITIZEN ACTION
2430 S. Mill, Suite 237
Tempe, Arizona 85282

William Baker
ELECTRICAL DISTRICT NO. 6
P.O. Box 16450
Phoenix, Arizona 85011

John Jay List
General Counsel
NATIONAL RURAL UTILITIES
COOPERATIVE FINANCE CORP.
2201 Cooperative Way
Herndon, Virginia 21071

Wallace Tillman
Chief Counsel
NATIONAL RURAL ELECTRIC
COOPERATIVE ASSOCIATION
4301 Wilson Blvd.
Arlington, Virginia 22203-1860

Robert Julian
PPG
1500 Merrell Lane
Belgrade, Montana 59714

C. Webb Crockett
FENNEMORE CRAIG
3003 N. Central Avenue, Suite 2600
Phoenix, Arizona 85012-2913
Attorneys for Asarco, Inc., Cyprus Climax Metals Co.;
Enron, Inc. and AAEC

Department of Navy
Naval Facilities Engineering Command
Navy Rate Intervention
901 M Street SE, Building 212
Washington, DC 20374
Attn: Sam DeFrawi

Robert S. Lynch
340 E. Palm Lane, Suite 140
Phoenix, Arizona 850o04-4529

Michael Block
Goldwater Institute
Bank One Center
201 North Central
Concourse Level
Phoenix, Arizona 85004

Stan Barnes
Copper State Consulting Group
100 W Washington Street, Suite 1415
Phoenix, Arizona 85003

Carl Robert Aron
Executive Vice President and COO
Itron, Inc.
2818 N. Sullivan Road\
Spokane, Washington 99216

Douglas Nelson
DOUGLAS C NELSON PC
7000 N. 16th Street, Suite 120-307
Phoenix, Arizona 85020

Albert Sterman
ARIZONA CONSUMERS COUNCIL
2849 East 8th Street
Tucson, Arizona 85716

Michael Grant
GALLAGHER & KENNEDY
2600 N. Central Avenue
Phoenix, Arizona 85004
Attorneys for AEPCO

Suzanne Dallimore
Antitrust Unit Chief
Department of Law Building
Attorney General's Office
1275 West Washington Street
Phoenix, Arizona 85007

Lex Smith
Michael Patten
BROWN & BAIN PC
2901 N. Central Avenue
Phoenix, Arizona 85001-0400
Attorneys for Morenci Water & Electric,
Ajo Improvement & Phelps Dodge Corp.

Vinnie Hunt
CITY OF TUCSON
Department of Operations
4004 S. Park Avenue, Building #2
Tucson, Arizona 85714

Steve Wheeler
Thomas M. Mumaw
SNELL & WILMER
One Arizona Center
400 E. Van Buren Street
Phoenix, Arizona 85004-0001
Attorneys for APS

William Sullivan
MARTINEZ & CURTIS, P.C.
2716 N. 7th Street,
Phoenix, Arizona 85006
Attorneys for Mohave Electric Cooperative and
Navopache Electric Cooperative

Elizabeth S. Firkins
INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, L.U. #1116
750 S. Tucson Blvd.
Tucson, Arizona 85716-5698

Carl Dabelstein
2211 E. Edna Avenue
Phoenix, Arizona 85022

Larry K. Udall
Arizona Municipal Power Users' Assoc.
2712 N. 7th Street
Phoenix, Arizona 85006-1090

Roderick G. McDougall
City Attorney
Attn: Jesse Sears, Assistant Chief Counsel
200 W Washington Street, Suite 1300
Phoenix, Arizona 85003-1611

William J. Murphy
200 W Washington Street, Suite 1400
Phoenix, Arizona 85003-1611

Terry Ross
Center for Energy & Economic Development
P. O. Box 288
Franktown, Colorado 80116

Peter Glaser
Doherty Rumble & Butler PA
1401 New York Ave NW Suite 1100
Washington DC 20005

Russell E. Jones
33 N. Stone Ave., Suite 2100
P.O. Box 2268
Tucson, Arizona 85702

Christopher Hitchcock
P.O. Box 87
Bisbee, Arizona 85603-0087
Attorneys for Sulphur Springs Valley
Electric Cooperative, Inc.

Myron L. Scott
1628 E. Southern Avenue, No. 9-328
Tempe, AZ 85282-2179
Attorneys for Arizona for a Better Environment

Andrew Bettwy
Debra Jacobson
SOUTHWEST GAS CORPORATION
5241 Spring Mountain Road
Las Vegas, Nevada 89102

Barbara R. Goldberg
OFFICE OF THE CITY ATTORNEY
3939 Civic Center Blvd.
Scottsdale, Arizona 85251

Phyllis Rowe
Arizona Consumers Council
P. O. Box 1288
Phoenix, Arizona 85001

Thomas Pickrell
Arizona School Board Association
2100 N. Central Avenue
Phoenix, Arizona 85004

Walter Meek
Arizona Utility Investors Assoc
2100 North Central, Ste 210
Phoenix, Arizona 85067

Timothy M. Hogan
Arizona Center for Law
in the Public Interest
202 East McDowell Road, Ste 153
Phoenix, Arizona 85004

Marcia Weeks
18970 North 116th Lane
Surprise, AZ 85374

John T. Travers
William H. Nau
272 Market Square, Suite 2724
Lake Forest, Illinois 60045

Timothy Michael Toy
Winthrop Stimson Putman & Roberts
One Battery Park Plaza
New York, New York 10004-1490

Andrew N. Chau
Shell Energy Services Co. LLC
1221 Lamar, Ste 1000
Houston, Texas 77010

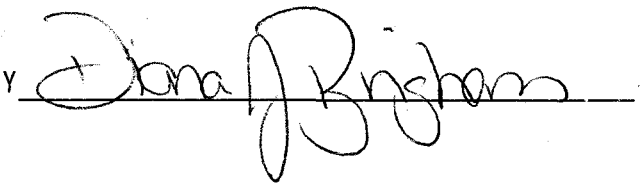
Stephen L. Teichler
Duane, Morris & Heckscher LLP
1667 K Street NW, Ste 700
Washington, DC 20006

Kathy T. Puckett, Senior Counsel
Shell Oil Company
200 North Dairy Ashford
Houston, Texas 77079

Chuck Miessner
New Energy Ventures
P. O. Box 711, mailstop DA 308
Tucson, Arizona 85702

Jeffrey Walker Martin
New Energy Ventures
1000 Wilshire Blvd Ste 500
Los Angeles, California 90017

Raymond Heyman, Esq
Darlene M. Wauro Esq
Roshka Heyman & DeWulf PLC
Two Arizona Center
400 North 5th Street, Ste 1000
Phoenix, Arizona 85004

BY 

APPENDIX 1

PG&E Energy Services

July 2, 1998

Mr. Ray T. Williamson
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

RE: Retail Electric Competition - June 25, 1998 Draft of Proposed Rule Revisions

Dear Mr. Williamson,

Pursuant to your June 25, 1998 letter, PG&E Energy Services submits the following comments with respect to the 1st Draft of proposed revisions to the Retail Electric Competition Rules.

GENERAL COMMENTS

On the whole, we complement the Staff on the quality and comprehensiveness of the proposed revisions. The new provisions on generation tagging and emissions characteristics are, however, problematic and our concerns are addressed below.

SPECIFIC COMMENTS

Reporting and Labeling Requirements

Sections R14-2-1614.A.3 and 10 and Sections R14-2-1618.C.1, 2, 3, 4, 5, 6, 7 and E, G and H require generation composition and emissions information for an ESP's ***entire*** sales base. These sections must be changed to apply only to that portion of an ESP's sales for which a marketing representation is made to customers about the composition of electricity as in, for instance, a renewable product.

We will generally not know the source of much of the power we are selling. We will largely be selling what is known as "system power." Much of our electricity will be obtained in very active trading markets wherein blocks of electricity exchange hands a number of times. Unless we are the original purchaser, we will not be able to find out the generation composition or emissions information. We cannot require the earlier "owners" of such power to pass along this information.

Clearly, for any product for which we make an environmental quality claim, we will back up that claim. In such instances, we will be incurring the extra cost of owning or directly purchasing and tracking renewable resources. Such costs will necessarily be borne by customers purchasing renewable products for this to be viable in the long run.

6900 Camelback Road - Suite 800 - Scottsdale, Arizona 85251 Phone: 888.994.3902 Fax: 602.994.4438 A PG&E Company

PG&E Energy Services

It is our understanding that these sections of the rules have *not* been scrutinized in a manner similar to most other issues in working group efforts. We would be willing to participate in a working group on this issue. PG&E Energy Services is sensitive to environmental issues and we believe there are commercially viable environmentally friendly products. We currently have a renewable product in testing in California with residential customers.

Aggregation

1. Given the overall 20% ceiling on customer eligibility for the first two years, please consider reducing the aggregation thresholds back to the original 20 kilowatts (and a corresponding monthly maximum of 8, 250 kilowatt-hours for those lacking demand meters). 16,500 kilowatt-hours is simply too high a threshold. 16,500 at 40 kilowatts demand equates to a 57% load factor in the peak month. This means load factors in the other 11 months are likely to significantly exceed 57%. We believe competition can benefit most those customers using electricity relatively inefficiently today and yet the Commission's 16,500 kilowatt-hour threshold allows only the most efficient customers without demand meters to be eligible.

2. Please clarify the method for determining a customer's peak load for eligibility purposes. We recommend that the rules in R14-2-1604 Sections A and B insert the word "non-coincident" before "peak demand." Non-coincident is the demand measurement used in existing billing. This clarification is needed so that an Affected Utility cannot assert that the Commission meant "coincident" peak demand. There are tens of thousands of meters in place that measure "non-coincident" peak demand and only a few hundred which measure "coincident" peak demand.

Rates for Unbundled Services

Our "cc&n" application presented extensive information and reasons that we had hoped would lead to revisions in R14-2-1606.H (Rates for Unbundled Services) to eliminate the concept of a cost based single rate for competitively provided services. Such a concept is out of sync with commercial reality. In our cc&n application, we indicated we would neither price below short-run marginal cost nor price above 30 cents per kilowatt-hour. The latter number we selected because it was the penalty amount for the solar portfolio standard. We must have the flexibility to price our competitive products between these numbers as market conditions, financing products and customer negotiations dictate. If we charge too high a competitive price, customers can and will switch to other lower priced providers. That is the difference between competition and regulated monopoly.

PG&E Energy Services

Scheduled Outage Notification

R14-2-1613.D contains a new requirement for ESP's to notify customers and the Commission about outages and interruptions. This new requirement should be eliminated. First, reliability is the responsibility of the Affected Utility and the Independent System Operator and not a non-utility ESP. The ESP Service Agreements are the proper forum for providing an Affected Utility the financial assurances that imbalances will be compensated for properly. We have already provided Commission Staff with draft language that addresses this issue.

ESP Service Agreements

To date, no Affected Utility has expressed any interest or willingness to negotiate an ESP Service Agreement with us. Obviously, our affiliate Pacific Gas & Electric Company has such agreements existing with a number of Arizona utilities.

The Commission's revised rules now require such an agreement as a precondition for cc&n approval (R14-2-1603 Section F.3). Hence, we request the Commission's help in motivating the Arizona Affected Utilities. We recommend:

1. The ACC require each affected utility to offer a reasonable *standard* ESP Service Agreement by a date certain, of say, August 1, 1998.
2. The ACC require each affected utility to offer identical or better terms to new entrants filing timely cc&n applications earlier than it offers an ESP Service Agreement to its own affiliate.

Contracts

R14-2-1612.C requires "contracts whose term is 1 year or more and for service of 1 MW or more must be filed with the Director of the Utilities Division." We request the Commission eliminate this requirement. Alternatively and minimally, the Commission must provide confidentiality for filed contracts.

Buy- Through

Section R14-2-1604.H allows an Affected Utility to engage in buy-through arrangements. Given other rule revisions, we are now uncertain as to why this provision remains and to whom it applies. It appears redundant with direct access service and should be eliminated from the rules. If it is not redundant, we must ask what additional benefit buy-through conveys when it if offered by an Affected Utility to a customer? We fear it offers beneficial transmission access and / or additional price discounts. If buy-through is additionally beneficial, then it is another marketing tool for an affected utility to use to retain customers by offering features superior to

PG&E Energy Services

standard offer. The proposed affiliate rules do not adequately address this concern because buy-through originates from within the utility.

Is it possibly the Commission's intent for buy-through to apply only to those customers not otherwise eligible on January 1, 1999? Is it the Commission's intent that Affected Utility's must offer the same buy-through terms to a company such as PG&E Energy Services so that we can in turn offer identical buy-through arrangements and not be disadvantaged? Please clarify the rules for buy-through.

Unbundled Billing Elements

We applaud the Staff for requiring that Standard Offer bills display cost elements. We believe many Arizona customers will see that they are paying 7 cents, 8 cents or more per kilowatt hour for generation alone and will derive incentive to shop elsewhere.

For Standard Offer bills, please consider combining the "CTC" charge into "generation." We suggest this because: 1) Standard offer customers do not technically pay "CTC" under the rules; and 2) "CTC" displayed on direct access bills will be less than the *imputed* "CTC" on Standard Offer tariffs and there is no reason to confuse customers.

Rule Markups

Attached are pages 27 and 30 of the Draft rules with suggested deletions and insertions.

Respectfully submitted,

PG&E ENERGY SERVICES CORPORATION

By Tom Broderick
Tom Broderick

cc: Docket Control
Larry Robertson

APPENDIX 2

PG&E Energy Services

July 14, 1998

Mr. Ray T. Williamson
Acting Director - Utilities
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

RE: July 10, 1998 2nd Draft of Proposed Revisions to Retail Electric Competition Rules

Dear Mr. Williamson:

PG&E Energy Services Corporation ("Energy Services") will be participating in the July 15, 1998 Open Meeting of the Commission which has been scheduled for "input from stakeholders" with regard to the above-referenced revisions. The purpose of this letter is to reduce to writing the several matters which Energy Services intends to address at that time.

Unbundled Rates [R14-2-1606 (G) and R14-2-1607 (D)]:

Neither of these provisions appears to provide an opportunity for interested persons, such as Energy Services, to participate in the Commission's examination of unbundled rates of the Affected Utilities. Energy Services believes that such omission represents a serious, if not fatal, deficiency in the Commission transition approach. As R14-2-1606 (G) (2) provides, "such rates shall reflect the costs of providing the [unbundled] services." Further, R14-2-1607 (D) contemplates that the distribution components thereof will reflect an accurate application of the results of the Commission's recent decision on "stranded costs" to the Affected Utility system in question. But there is no indicated means by which an affected Electric Service Provider can participate in the process by which the degree of the Affected Utility's compliance with these standards and requirements is evaluated. Given the ultimate potential effect of such unbundled rates as may be approved upon the competitive market, such procedural and due process exclusion of new entrants should not occur. Rather, the proposed revised rules should be modified to provide for intervention and hearing on unbundled rate filings made by Affected Utilities on or before August 24, 1998. The third ordering paragraph of the Commission's Decision No. 60977 on "stranded cost" appeared to contemplate such an opportunity (see page 23, lines 27-28), but the proposed revised rules do not so provide.

It is essential for unbundled rate filings to be available at the time the review of stranded cost filings is begun. Unbundled rates are the foundation upon which such a review is based. Absent unbundled rates, there is no context within which to evaluate the relative magnitude of stranded costs and the ultimate total cost of serving a customer competitively. Since the CTC charge will only apply to competitively served customers, it is especially imperative that Energy Services and other prospective new market entrants be aware of all the other unbundled charges in order

6900 Camelback Road - Suite 800 - Scottsdale, Arizona 85251 Phone: 888.994.3902 Fax: 602.994 4436 A PG&E Company

for us to be able to evaluate whether there is in fact going to be a vibrant market on January 1, 1999.

This is a real very issue. Ideally, valid unbundled tariffs would have been filed at the end of last year in compliance with the existing rules and we would have been in a position to make an informed evaluation of the upcoming stranded cost filings. Unfortunately, that is not how events have unfolded. In that regard, it is not particularly helpful for us to know that, for example, a company's stranded costs are $500 million or that its proposed CTC charge is 0.7 cents per kilowatt hour. We need to be in a position to add the proposed CTC charge to all the other unbundled service components, then compare the result to the Standard Offer tariff and determine whether customers can achieve savings next year.

Disclosure and Re-regulation [R14-2-1618 and R14-2-203(C)]

Energy Services is not insensitive to the concerns which it understands the Commission and its staff are endeavoring to address through Sections R14-2-1618 and R14-2-203 (C) of the proposed revised rules. However, in turn, it is concerned that the resulting requirements will be unnecessarily burdensome and expensive for new market entrants, such as Energy Services, and potentially could discourage certain prospective competitors from entering the Arizona market. More specifically, a number of these requirements have been incorporated by reference from a pre-existing regulatory scheme. Others, while new, appear to have been conceived against the mindset of a regulatory background.

Energy Services respectfully submits that you cannot regulate to a market approach. To the contrary, an over regulated market environment can effectively lead to no competitive market at all, or at least one substantially diminished from what it otherwise might have been. The goal is to create an environment in which competition can work. This requires the presence of multiple viable marketers. This essential ingredient cannot be created through regulation or re-regulation of all aspects of the marketplace.

Against this background, R14-2-1618 and R14-2-203(C) strike a note of discord because of the pervasive nature of their proposed governance of competitive behavior. This is particularly true when examined in the context of non-residential customers. As a consequence, Energy Services respectfully recommends that R14-2-1618 not be applied to service arrangements between Electric Service Providers and **non**-residential customers. In addition, it recommends that a subsection (g) be added to R14-2-203 (C) (1) providing as follows:

> "The Electric Service Provider does not have
> a product or service offering available to the class or customer
> type requesting such service or products."

Unbundled Rates [R14-2-1606(H)(2)]:

Section R14-2-1606(H)(2) requires rates for unbundled services "shall reflect the costs of providing the services." [Emphasis added] Either this sentence should be deleted as regards competitively provided services, or language should be added which allows for alternative market based pricing approaches. Energy Services does not have single point rates or tariffs. Rather, we enter into contracts for energy services with negotiated terms based on market conditions at the time. Furthermore, this language appears to conflict with R14-2-1612(A) which provides "market determined rates for competitively provided services as defined in R14-2-1615 shall be deemed to be just and reasonable." [Emphasis added]

Certificate of Convenience & Necessity [R14-2-1603]:

With reference to the changes proposed in R14-2-1603, which govern the issuance of certificates of convenience and necessity to Electric Service Providers, Energy Services would offer the following comments. The Commission must be prepared to vigorously enforce, if necessary, the requirement set forth in R14-2-1603 (7) that "Affected Utilities or their successor entities are required to negotiate in good faith" with prospective Electric Service Providers "relative to service acquisition agreements." Only in that way can the continued transition to a competitive retail electric market in Arizona be assured.

More specifically, Energy Services has previously filed an application for an Electric Service Provider certificate of convenience and necessity pursuant to R14-2-1603 in its current form; and that application has been assigned Docket No. E-0359A-98-0389. In addition, the company has contacted two of the larger Affected Utilities within the State of Arizona for the purpose of initiating negotiations relative to the execution of service acquisition agreements. Thus, at this juncture, Energy Services has done all that it can to move the process forward by means of which it will become an Electric Service Provider by January 1, 1999.

In the coming months, Energy Services will continue to do that which is required of it in order to attain that goal, including supplementing its filed application, if and as necessary, and supporting the same at the time of the public hearing thereon. Thus, it would indeed be ironic if the entire certification process were to be allowed to become "hostage" to the unwillingness of an Affected Utility to negotiate in good faith relative to a service acquisition agreement through which Energy Services could ultimately offer its competitive product to the intended market. As long as the Commission is willing to actively enforce the good faith negotiation requirement prescribed in R14-2-1603 (G) (7), such an impediment to the certification process should not occur. But, absent such a willingness upon the part of the Commission, the requirement of R14-2-1603 (G) (3) for the existence of a service acquisition agreement as a condition precedent to certification could become an effective barrier to the commencement of competition.

Solar Portfolio Standard [R14-2-1609]:

A revision proposed in R14-2-1609(G) is unclear and probably anti-competitive in its ultimate effect. More specifically, the solar portfolio standard applies to customers served competitively, presumably by an affiliate of an Affected Utility or an ESP. The proposed language seems to imply that an Affected Utility can provide the solar portfolio standard from within the utility and likewise "count" the amount towards existing requirements now applicable to Standard Offer. Such a counting will exacerbate the cost differential created by establishing a costly solar portfolio for competitively served customers while it reduces the corresponding costs to standard offer customers. The proposed revision should be deleted.

Definitions [R14-2-1601]:

The 2nd Draft has deleted the definition for "load serving entity" yet such term is used in R14-2-1618 (Information Disclosure Label). Since labeling is a costly endeavor, its applicability must include the UDC's Standard Offer as was required in the June 23, 1998 1st Draft. Hence, the definition as it appeared in the first draft should be restored.

In closing, Energy Services wishes to express its appreciation to the Commission and its staff for the opportunity to submit comments and suggestions upon the proposed revised rules.

Respectfully submitted,

PG&E ENERGY SERVICES CORPORATION

By _____
Tom Broderick
Lawrence V. Robertson, Jr.